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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 598

GUY FARMER, CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD, et al.,

Petitioners,

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION OF UNITED STATES AND CANADA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinion Below

The memorandum opinion of the United States District Court for the District of Columbia is reported at 117 F. Supp. 35 (R. 41). The order of the Court of Appeals denying a stay of the preliminary injunction was made December 4, 1953 (R. 51).

Jurisdiction

Petitioner alleges jurisdiction of this Court under 28 U. S. C. 1254(1) and 2101(d).

Statement

Access by unions to the facilities of the National Labor Relations Board is conditioned upon filing by officers of such unions of the non-communist affidavit required by Section 9(h) of the Act. Such affidavits are effective to maintain compliance for one year, and must be renewed annually thereafter. Commencing in 1950 and annually thereafter respondent's officers filed such affidavits and respondent has been and now is in compliance (R. 6, 15).

In August, 1953, respondent's president, Ben Gold, was indicted under 18 U. S. C. 1001 on the charge that the 1950 affidavit filed by him was false (R. 16). No charge has been made as to the truthfulness of the affidavits filed by Gold in 1951, 1952 or 1953. Gold pleaded not guilty to the indictment and a jury trial on the indictment is currently in progress in the District Court for the District of Columbia.

Shortly after the indictment was returned and on October 23, 1953, the Board adopted a Statement of Policy (R. 18) in which it announced that it would forthwith refrain from processing representation proceedings involving unions whose officers were under indictment for having filed a false Section 9(h) affidavit unless a rival intervenor or an employer asserted prejudice to themselves because of such deferment. In such case, and in cases brought by a rival union, and in consent and decertification proceedings, the Board would proceed to an election, but would certify the result only if the union lost, but not if it won.

On November 4, 1953, respondent instituted an action for a declaratory judgment that such Statement of Policy is unlawful and to enjoin the Board from effectuating it (R. 4). Said action has not yet been tried.

On November 23, 1953, the District Court issued a preliminary injunction against the petitioner's effectuation

of the Statement of Policy pendente lite. This is the order sought to be reviewed (R. 46).

The Court of Appeals denied petitioner's motion for a stay of said order (R. 51) and the appeal therefrom has not yet been argued.

Question Presented

May the Board deny or limit the compliance status of a union solely because an indictment has been returned against an officer of such union on the charge that he had filed a false Section 9(h) affidavit, particularly where such affidavit no longer forms the basis for the union's current compliance status?

Argument

I. The decision of the Court of Appeals denying petitioner's motion for a stay of the preliminary injunction is based upon *Farmer* v. *United Electrical Workers* (No. 11, 727-8-9, decided December 4, 1953), in which respondent herein is also a party. Such decision is the subject of the Board's petition in No. 597. The reasons why the petition should not be granted in that action are applicable here. Respondent adopts and respectfully refers this Court to the respondents' brief in that action and does not repeat the argument there made.

II. Thre are, however, additional reasons why the petition in this action should be denied.

1. The Statement of Policy rests solely on the indictment returned against one of the officers of the respondent. An indictment is no more than the finding of a grand jury (*Grin* v. *Shine*, 187 U. S. 181, 192) upon which a prosecution may proceed (*Ex parte Bain*, 121 U. S. 1). The inference of guilt which is inherent in the Statement of Policy vio-

lates the presumption of innocence embodied in the due process clause. *Coffin* v. *United States,* 156 U. S. 432.

2. Assuming, arguendo, that the indictment may properly support such an inference, respondent's current compliance status no longer rests on the affidavit involved in the indictment but upon an affidavit filed in 1953, which is not put in question by the indictment. The effectiveness (for compliance purposes) of the affidavit of August, 1950 terminated August, 1951 (28 U. S. C. 159(h)) and respondent's current compliance status is based entirely on affidavits filed in 1953 (R. 15).

3. It is almost certain that the specific question growing out of the preliminary injunction issued in this action will be moot before this appeal can be argued. The trial on the indictment commenced February 23, 1954 and is now reaching completion. It should be concluded and verdict rendered before this Court could hear the appeal. This Court will not act upon a controversy that is moot. *Doremus* v. *Board of Education,* 342 U. S. 429, 432-3; *Amalgamated Association* v. *Wisconsin Empl. Rel. Board,* 340 U. S. 416; *St. Pierre* v. *United States,* 319 U. S. 41 and cases cited.

It is respectfully submitted that the Board's petition should be denied.

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March 23, 1954.